

## Internal Revenue Service

Department of the Treasury  
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### Legend

Taxpayer =  
State =  
Trust =  
Husband =  
Country A =  
Country B =

Entity 1 =  
Foreign Act 1 =

Foreign Act 2 =  
Date 1 =  
A =  
City 1 =  
City 2 =  
City 3 =

Dear :

This is in response to your July 9, 2007 letter and other correspondence requesting gift and estate tax rulings in connection with a proposed gift and bequest to Trust.

The facts submitted are as follows:

Taxpayer is a United States citizen and resident of State. Taxpayer's deceased husband (Husband) was a painter who worked in the United States and Country A.

In order to manage, conserve, and distribute Husband's art works, Taxpayer established Trust. The purposes of Trust are to make Husband's works widely available for public exhibition, to provide funding for education and training in the visual arts, and to be of benefit to the public in those areas.

The works will be made available for exhibition at public galleries and museums anywhere in the world, but principally in Country B and the United States. In the United States, public benefit may be provided through loans or transfers to a United States foundation with similar purposes, or loans of the works to public galleries or museums. Within Country B, the work is expected to be exhibited specifically in public galleries and museums located in City 1, City 2, and City 3.

Items not on public exhibition will be available for viewing for purposes of private study by arrangement with the trustees, acknowledging the fact that the collection is unlikely to be on show, in its entirety, in public galleries at all times. The archives will be made available by the trustees, as appropriate, to academic researchers, artists, and others with reasonable cause to examine them.

The trustees may on occasion sell items within the collection, continuing and extending existing relationships already formed with galleries in Country B, the United States, and elsewhere in order to provide funding to support future activities as an addition to the original endowment funding.

Apart from direct access to the collection and archives, the trustees intend to give financial support and encouragement by way of grants or loans to other charities in accordance with Trust's charitable purposes. Such grants or loans may be made, for example, to smaller galleries or museums which may not be able to support the financial costs of an exhibition of the collection without such a grant. Also, there may be collaborative activities with other charities where some cooperation would help achieve the purposes of both charities.

With respect to grants to individuals, a statement of the procedures required by § 4945 of the Internal Revenue Code (Code) will be provided separately but, in general terms, such grants will be made to individuals selected from a sufficiently wide class as to constitute a sufficient section of the public to constitute a charitable class. Selection criteria will be related to the purpose of the grant; for example, academic or artistic performance, recommendations from instructors, financial need, and opinions of a suitably qualified selection panel. The procedure for selection for individual grants and detailed selection criteria for grants from Trust to individuals will be drawn up by the trustees once Trust has become operational. They will then be submitted for advance

approval as required by § 4945. No awards will be made before the selection procedure and grant criteria have been approved.

Trust is organized as a registered charity of Country A under Foreign Act 1. Taxpayer's counsel filed with Entity 1 an application for entry of Trust into the Charity Register of Country A. That application was approved by Entity 1 in a Date 1 letter.

Under its terms, Trust will operate for "purposes, objects or institutions exclusively charitable in law." Trust defines "charitable in law" as having the same meaning as "charitable purpose" for purposes of Foreign Acts 1 and 2.

Article 3(ii) of Trust provides, in relevant part, that the awarding of grants to individuals must be made on an objective and nondiscriminatory basis pursuant to a procedure approved in advance as required by the Internal Revenue Service.

Article 7(h) provides, in relevant part, that no part of the net earnings of any such business shall inure to the benefit of any private stockholders or individual.

Article 7(y) provides that the trustees are prohibited from engaging in any act of self-dealing as defined in § 4941, from retaining any excess business holdings as defined in § 4943(c), from making any investments which would subject Trust to tax under § 4944, and from making any taxable expenditure as defined in § 4945(d). The trustees are to make distributions at such time and in such manner as not to subject Trust to tax under § 4942. The trustees are prohibited from engaging in any activities which amount to attempting to influence legislation, and must not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate to public office.

Taxpayer is one of three original trustees of Trust. The other two trustees are residents of Country B. Taxpayer will fund Trust with an initial endowment of A. Upon Taxpayer's death, under the terms of her will, the bulk of Husband's work and archives will be transferred to Trust. Trust has not filed, and does not intend to file for recognition of exemption under § 501(c)(3).

You have requested rulings that any gift or bequest that Taxpayer makes to Trust of property otherwise subject to the federal gift or estate tax will qualify for a gift tax deduction under § 2522 or an estate tax deduction under § 2055 regardless of whether Trust applies for recognition of exemption under § 501(c)(3).

## LAW AND ANALYSIS

Section 2522(a) and § 25.2522(a)-1(a) of the Gift Tax Regulations provide, in general, that in computing taxable gifts for the calendar year, there shall be allowed as a

deduction in the case of a citizen or resident of the United States the amount of all gifts made during such year to or for the use of—

- a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

- a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals.

Section 25.2522(a)-1(a) further provides, in pertinent part, that the gift tax charitable deduction is not limited to gifts for use within the United States, or to gifts to or for the use of domestic corporations, trusts, community chests, funds, or foundations, or fraternal societies, orders, or associations operating under the lodge system.

Section 2522(c)(1) provides that no deduction is allowed under § 2522 for a gift to or for the use of an organization or trust described in § 508(d) or § 4948(c)(4) subject to conditions specified in such sections.

Section 2055(a) and §20.2055-1(a) of the Estate Tax Regulations provide, in general, that for purposes of the federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate of a decedent who was a citizen or resident of the United States at the time of his death, the amount of all bequests, legacies, devises, or transfers—

- to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or

intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

-- to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 20.2055-1(a) further provides, in pertinent part, that the estate tax charitable deduction is not limited to transfers to domestic corporations or associations, or to trustees for use within the United States, nor is the deduction subject to percentage limitations such as are applicable to the charitable deduction under the income tax.

Section 2055(d) provides that the amount of the deduction under § 2055 for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

Section 2055(e)(1) provides that no deduction is allowed under § 2055 for a transfer to or for the use of an organization or trust described in § 508(d) or § 4948(c)(4) subject to the conditions specified in such sections.

Section 501(c)(3) exempts from federal income tax organizations organized and operated exclusively for charitable purposes.

Section 508(a) provides generally that an organization shall not be treated as described in § 501(c)(3) unless it applies for recognition of exemption in a timely manner.

Section 508(d)(2) and § 1.508-2(b)(1) of the Income Tax Regulations provide that no gift or bequest made to an organization shall be allowed as a deduction under § 2055 or § 2522 if such gift or bequest is made -- (A) to a private foundation or a trust described in § 4947 in a taxable year for which it fails to meet the requirements of § 508(e), or (B) to any organization in a period for which it is not treated as an organization described in § 501(c)(3) by reason of § 508(a).

Section 508(e)(1) provides that a private foundation shall not be exempt from taxation under § 501(a) unless its governing instrument includes provisions the effects of which are -- (A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under § 4942 and (B) to prohibit the foundation from engaging in any act of self-dealing (as defined in § 4941(d)), from retaining any excess business holdings (as defined in § 4943(c)), from making any investments in such manner as to subject the foundation to tax under § 4944, and from making any taxable expenditures (as defined in § 4945(d)).

Section 4947(a)(1) provides that for purposes of §§ 507-509 (other than §§ 508(a), (b), and (c)) and for purposes of chapter 42, a trust which is not exempt from taxation under § 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and for which a deduction was allowed under § 170, § 545(b)(2), § 556(b)(2), § 642(c), § 2055, § 2106(a)(2), or § 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in § 501(c)(3). Under § 53.4947-1(a) of the Foundation and Similar Excise Taxes Regulations, the basic purpose of § 4947 is to prevent these trusts from being used to avoid the requirements and restrictions applicable to private foundations.

Section 4948(b) provides that § 507 (relating to termination of private foundation status), § 508 (relating to special rules with respect to § 501(c)(3) organizations), and chapter 42 (other than this section) shall not apply to any foreign organization that has received substantially all of its support (other than gross investment income) from sources outside the United States.

Section 1.508-2(b)(1)(viii) provides that since a charitable trust described in § 4947(a)(1) is not required to file a notice under § 508(a), § 508 (d)(2)(B) and § 1.508-2(b)(1)(i)(b) are not applicable to such a trust.

Section 1.501(c)(3)-1(d)(3)(ii) provides examples of educational organizations, including museums. The promotion of arts and culture is generally recognized as an educational activity.

Section 53.4948-1(b) provides that § 507 (relating to terminations of private foundation status), § 508 (relating to special rules with respect to § 501(c)(3) organizations), and chapter 42 (other than § 4948) shall not apply to any foreign organization that from the date of its creation has received at least 85 percent of its support (as defined in § 509(d), other than § 509(d)(4)) from sources outside the United States. For purposes of this paragraph, gifts, grants, contributions, or membership fees directly or indirectly from a United States person (as defined in § 7701(a)(30)) are from sources within the United States.

Rev. Rul. 64-174, 1964-1 C.B. 183, provides that a foundation formed for charitable, educational and literary purposes and which creates interest in the development of the American theatre in areas other than New York City, aids local communities to establish their own charitable and educational repertory theatres, and contributes part of its funds to exempt charitable organizations is exempt from tax under § 501(c)(3). See also Rev. Rul. 64-175, 1964-1 C.B. 185.

Rev. Rul. 66-178, 1966-1 C.B. 138, provides that an organization created to foster and develop the arts by sponsoring an annual public exhibit at which art works of unknown but promising artists are selected by a panel of expert judges and gratuitously displayed is exempt from Federal income tax under § 501(c)(3).

Rev. Rul. 71-395, 1971-2 C.B. 228, held that a cooperative gallery that was engaged in showing and selling only the works of its own members was a vehicle for advancing their careers and promoting the sale of their work. The ruling held that even though the exhibition and sale of paintings is an educational activity, the gallery in this instance served the private interests of its members.

Estate of Swan v. Commissioner, 24 T.C. 829 (1955), acq., 1956-2 C.B. 8, aff'd in part and rev'd in part on other grounds, 247 F.2d 144 (2d Cir. 1957), considered the application of the federal estate tax to two stiftungs, one organized under the laws of the Principality of Liechtenstein and the other, under the laws of Switzerland. Although the laws of neither country recognized trusts, the stiftungs were found to be comparable to trusts under United States law rather than corporations, and were treated accordingly. Id. at 856-858.

As provided above, §§ 2522(c)(1) and 2055(e)(1) disallow the gift tax charitable deduction and the estate tax charitable deduction, respectively, for transfers to or for the use of an organization or trust described in § 508(d) or § 4948(c)(4), subject to the conditions specified in such sections.

In this case, Trust will be funded by an initial endowment of A by Taxpayer, a United States citizen. The bulk of Husband's work and archives will be subsequently transferred to Trust by will upon Taxpayer's death. Therefore, Trust will be not be described in § 4948(b), and Trust will be subject to § 508(d) and not to § 4948(c)(4).

Section 508(d)(2)(A) disallows a deduction for a gift to a private foundation or a § 4947 trust in a taxable year for which the foundation or the trust fails to meet the requirements of § 508(e). Article 7(y) of Trust sets forth the applicable governing provisions required by § 508(e). Accordingly, we find that Trust meets the § 508(e) requirements and is, therefore, not described by § 508(d)(2)(A).

Section 508(d)(2)(B) disallows a charitable deduction for a contribution to any organization during a period in which the organization is not treated as described in § 501(c)(3) by reason of § 508(a). Under § 1.508-2(b)(1)(viii), contributions to a charitable trust described in § 4947(a)(1) are not subject to this rule. If Trust is a trust described in § 4947(a)(1), contributions to Trust will be deductible regardless of when or whether Trust applies for recognition of exemption under § 501(c)(3).

Trust is described in § 4947(a)(1) because (a) it is a trust; (b) Trust will not be exempt from tax under 501(a); (c) all of Trust's assets will be devoted to charitable purposes; and (d) as discussed below, a gift tax charitable deduction under § 2522(a) and an estate tax charitable deduction under § 2055(a) will be allowed for the transfers to Trust.

Trust is a trust for federal tax purposes because it lacks associates and will not engage in the conduct of business for profit. See Estate of Swan v. Commissioner, supra.

Trust will not be exempt from tax under § 501(a), because Trust does not intend to apply for recognition of exemption.

Trust purposes and planned operations are exclusively charitable. Foreign Act 1 enumerates charitable purposes. The list includes "the advancement of the arts, heritage, culture or science." Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in the Code in its "generally accepted legal sense", and that the term "charity" is defined to include, among a series of specific purposes, "advancement of education or science; erection or maintenance of public buildings, monuments, or works." Section 1.501(c)(3)-1(d)(3)(ii) specifically provides that promotion of arts and culture is generally recognized as an educational activity.

Like the organization described in Rev. Rul. 66-178, Trust is created to foster and develop the arts by sponsoring public exhibits of art work. Trust is unlike the organization described in Rev. Rul. 71-395, which was operated for the private interests of its members. Here, any art work sold by Trust will be sold to further the purposes of Trust and not for the private benefit of the individual artist. Accordingly, we find that the advancement of the visual arts through the public exhibition of the works of Husband as well as the making of grants for education and training in the visual arts qualifies as a charitable purpose. See Rev. Rul. 64-174, 1964-1 C.B. 183.

Trust represents that the selection procedure for grants to individuals and the criteria for such grants will be drawn up by the trustees once Trust has become operational. They will then be submitted for advance approval as required by § 4945. Accordingly, we find that all of Trust's assets will be devoted to exclusively charitable purposes.



Finally, as discussed below, an estate tax deduction under § 2055 and a gift tax deduction under § 2522 will be allowable for the proposed transfers to Trust. Accordingly, we find that Trust will be described in § 4947(a)(1) and contributions to Trust will be deductible regardless of when or whether Trust applies for recognition of exemption under § 501(c)(3). See § 1.508-2(b)(1)(viii) which provides that since a charitable trust described in § 4947(a)(1) is not required to file a notice under § 508(a), § 508 (d)(2)(B) and § 1.508-2(b)(1)(i) are not applicable to such a trust.

Section 508(d)(2)(A) disallows a deduction for a gift to a private foundation or a § 4947 trust in a taxable year for which the foundation or trust fails to meet the requirements of § 508(e). We find that Trust meets the § 508(e) requirements.

For purposes of § 2055(e)(1) and § 2522(c)(1), we conclude that §§ 508(d) and 4948(c)(4) will not bar the deductions under §§ 2055(a) and 2522(a). Accordingly, based upon the facts provided and the representations made, we conclude that the proposed gift to Trust will qualify for the gift tax charitable deduction under § 2522(a), and the proposed bequest to Trust will qualify for the estate tax charitable deduction under § 2055(a).

This ruling is subject to the following: (1) at the time of Taxpayer's death, Taxpayer is either a citizen or resident alien of the United States; (2) during Taxpayer's lifetime, Trust operates in a manner that meets the requirements of § 2055, § 2522, and chapter 42; (3) the terms of the gift and bequest to Trust satisfy the requirements of § 2055, § 2522, and the applicable regulations; and (4) at Taxpayer's death, Trust and the assets transferred to Trust conform with the facts and representations made herein.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Katherine A. Mellody  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure: Copy for section 6110 purposes

cc: